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7 **Local Counsel for Plaintiff Northstar Financial Advisors, Inc.**

8 [Additional Counsel on Signature Page]

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12
13 NORTHSTAR FINANCIAL ADVISORS,
INC., on Behalf of Itself and all Others
14 Similarly Situated,

15 Plaintiff,

16 v.

17 SCHWAB INVESTMENTS, CHARLES
SCHWAB & CO., INC., CHARLES
18 SCHWAB INVESTMENT MANAGEMENT,
INC., and SCHWAB TOTAL BOND
MARKET FUND,

19 Defendants.
20

Case No. C-08-4119 SI

CLASS ACTION

21 **STIPULATION AND [PROPOSED] ORDER**
DISMISSING WITHOUT PREJUDICE,
AND TOLLING, NORTHSTAR'S CLAIM
AGAINST DEFENDANTS SCHWAB
INVESTMENTS AND CHARLES SCHWAB
INVESTMENT MANAGEMENT, INC.,
FOR VIOLATIONS OF CALIFORNIA BUS.
& PROF. CODE §§17200 ET SEQ.

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27 [C-08-4119 SI] STIPULATION AND [PROPOSED] ORDER DISMISSING WITHOUT
PREJUDICE, AND TOLLING, NORTHSTAR'S CLAIM AGAINST DEFENDANTS SCHWAB
28 INVESTMENTS AND CHARLES SCHWAB INVESTMENT MANAGEMENT, INC., FOR
VIOLATIONS OF CALIFORNIA BUS. & PROF. CODE §§17200 ET SEQ.

1 Plaintiff Northstar Financial Advisors, Inc. ("Northstar") and defendants Schwab
2 Investments and Charles Schwab Investment Management, Inc. ("Defendants"), by and through their
3 counsel, hereby jointly submit a stipulated request for an order dismissing without prejudice, and
4 tolling, Northstar's claim against Defendants for violations of the California Business and
5 Professions Code Section §§17200 *et seq.*

6 **RECITALS**

7 **WHEREAS**, the above-captioned action *Northstar Financial Advisors, Inc. v. Schwab*
8 *Investments, et al.*, No. C-08-4119 SI was filed on August 28, 2008;

9 **WHEREAS**, on February 19, 2009, this Court granted in part and denied in part the
10 defendants' motion to dismiss and granted leave to file an amended complaint by no later than
11 March 2, 2009;

12 **WHEREAS**, on March 2, 2009, Northstar filed its First Amended Complaint;

13 **WHEREAS**, the First Amended Complaint contains six claims: five claims on behalf of the
14 purported class ("Class Claims") and one claim, Count VI, solely on behalf of Northstar against
15 Defendants for violations of the California Business and Professions Code Section §§17200 *et seq.*
16 ("Claim VI");

17 **WHEREAS**, on March 26, 2009, Defendants filed 1) a motion to dismiss, that moved to
18 dismiss all Northstar's claims, including Claim VI, and 2) a motion to compel arbitration of the
19 Section 17200 Claim and to stay its litigation in this action;

20 **WHEREAS**, the parties have agreed, subject to court approval, to dismiss Claim VI without
21 prejudice and to permit a tolling of the limitations period (including any applicable period of repose
22 and/or laches) of that claim for one year (365 days) from the date an order is entered approving this
23 Stipulation (with the option to renew the tolling of the claim at the end of that one-year time period)
24 on the condition that if Northstar does elect to reassert the Section 17200 claim then, insofar as it
25 pertains to the matters alleged in the First Amended Complaint, it shall do so only by way of

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1 arbitration as contemplated by the Investment Manager Service Agreement between Northstar and
 2 Schwab, and not as a separate action in state or federal court.

3 **WHEREAS**, the parties have agreed that the tolling period shall cover both the applicable
 4 period of time within which to initiate an arbitration proceeding and the period of time to re-initiate
 5 Claim VI, or the substance thereof;

6 **WHEREAS** no consideration was proffered by Defendants, nor received by Northstar, for
 7 the dismissal or tolling of Claim VI;

8 **WHEREAS**, the parties shall bear their own costs;

9 **STIPULATION**

10 **IT IS HEREBY STIPULATED**, subject to the Court's approval, by and between counsel
 11 for Northstar and Defendants:

- 12 1. Claim VI is dismissed from the instant action, without prejudice.
- 13 2. If Northstar does elect to reassert Claim VI, or the substance thereof, it shall do so
 14 only by way of arbitration as contemplated by the Investment Manager Service
 15 Agreement between Northstar and Defendants, and not as a separate action in state or
 16 federal court.
- 17 3. Defendants agree to toll for one year (365 days) beginning from the date of an order
 18 approving this stipulation the running of any limitations period, period of repose, or
 19 laches applicable to either the initiation of an arbitration proceeding under the
 20 Investment Service Agreement or the prosecution of Claim VI, or the substance
 21 thereof, in such an arbitration proceeding.
- 22 4. The parties may, if they choose to do so by mutual written agreement, extend the
 23 tolling period described in the immediately preceding paragraph.
- 24 5. Nothing in this Stipulation is intended to be, or shall be construed as, an admission by
 25 any party, nor used by any party to this Stipulation as an indication of the merits or
 26 lack thereof of Claim VI of the First Amended Complaint.

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6. The dismissal is without costs or fees to any party.

Dated: April _____, 2009

WOLF POPPER LLP

By: 

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(admitted *pro hac vice*)

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**Local Counsel for Plaintiff Northstar
Financial Advisors, Inc.**

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1 Dated: April 13, 2009

MORRISON & FOERSTER LLP

2 By: 
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16 **Attorneys for Defendants Schwab**
17 **Investments, Charles Schwab & Co., Inc.,**
18 **Charles Schwab Investment Management,**
19 **Inc., and Schwab Total Bond Market Fund**

20 **ORDER**

21 Pursuant to stipulation, IT IS SO ORDERED.

22 Dated: _____



23 _____
24 HONORABLE SUSAN ILLSTON
25 UNITED STATES DISTRICT JUDGE
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1 I, Christopher T. Heffelfinger, am the ECF user whose ID and password are being used to
2 file this Stipulation and [Proposed] Order Dismissing Without Prejudice Charles Schwab & Co., Inc.
3 and Schwab Total Bond Market Fund *Nunc Pro Tunc*. In compliance with General Order 45, X.B., I
4 hereby attest that Robert C. Finkel, co-counsel for Plaintiff Northstar, and Dorothy L Fernandez,
5 counsel for defendants, have concurred in this filing.

6
7 /s/ Christopher T. Heffelfinger
CHRISTOPHER T. HEFFELFINGER